

hurdle presented by Section 10(b) of the Act cannot be cleared in the case of US West's provision of National Directory Assistance service on an integrated basis.

Moreover, the three criteria from Section 10(a) of the Act cannot be met with respect to the regulatory forbearance requested by US West. Section 10(a)(1) of the Act requires the Commission, before granting forbearance from any regulatory restriction, to make an affirmative determination that the enforcement of such regulation is not needed to ensure just, reasonable and nondiscriminatory practices with respect to telecommunications carriers or the service in question.<sup>48</sup> 47 U.S.C. § 160(a)(1). US West is incorrect in stating in its Further Submission that application of the Section 272 separate affiliate requirements is "not necessary to ensure just, reasonable, and nondiscriminatory practices, classifications, and regulations" with respect to other carriers.<sup>49</sup> An example of the unreasonable and discriminatory practices that would continue if US West were granted forbearance from the Section 272 separate affiliate requirements can be seen in US West's claim that it will make available the "411" or "1-411" access code to any CLEC "purchasing switching from US West or reselling US West's local exchange service."<sup>50</sup> It is unclear exactly what US West means by that statement. The statement appears to imply that US West will route the traffic for National Directory Assistance and "411"

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<sup>48</sup> In addition, Section 10(a)(2) requires the Commission to decide whether enforcement of such regulation is required for consumer protection. Further, Section 10(a)(3) requires the Commission to make an affirmative finding that forbearance from applying such regulation is consistent with the public interest. It is MCI's position that, because Section 10(a)(1) cannot be satisfied, US West's forbearance request is fatally flawed, and the Commission would not need to address the other questions under Section 10(a) in order to deny the requested forbearance.

<sup>49</sup> US West Further Submission at 23-24.

<sup>50</sup> Id.

as it chooses; however, US West is required to route calls on resale ANI according to the presubscribed local carrier's instructions. For example, US West and the other BOCs are required to have the ability to route "411" calls to the presubscribed carrier's own directory assistance platform. US West has failed to conform to that standard and obligation.

Further, although US West claims that it will comply fully with Section 251 of the Act by providing National Directory Assistance service at a "wholesale discount" to any carrier wishing to resell the service,<sup>51</sup> such a claim is woefully inadequate. Under Sections 251 and 252 of the Act, MCI and other IXC's have a right to dialing parity and unbundled network elements.<sup>52</sup> This right includes nondiscriminatory access to US West's subscriber listing and directory assistance databases, including, but not limited to, the ILEC listings in US West's region. Further, Section 251(b)(3) imposes a duty on each and every LEC to provide all carriers with access to its directory assistance and directory listings databases on a nondiscriminatory basis.<sup>53</sup> US West is required to provide MCI and all other carriers with nondiscriminatory access to all listings that it provides through its directory assistance services; however, US West has not provided MCI with access to all of the listings it uses in providing directory assistance services. For two years, MCI has asked for and has been denied access to National Directory Assistance as a unbundled network element from US West. In failing to provide access to this unbundled network element,

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<sup>51</sup> Id.

<sup>52</sup> 47 U.S.C. §§ 251 and 252.

<sup>53</sup> See 47 U.S.C. § 251(b)(3).

US West violates Sections 251(b)(3), 251(c)(3) and 252 of the Act.<sup>54</sup>

Although US West has argued previously that it cannot provide MCI with out-of-region listings not owned by US West or in-region listings that are owned by incumbent LECs,<sup>55</sup> US West is incorrect in its interpretation of Section 251(b)(3) of the Act. Section 251(b)(3) states that each LEC has the duty to permit each competing provider of telephone exchange service and telephone toll service “to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable delays.”<sup>56</sup> Further, because it contains no limiting language to support the position taken by US West, Section 251(b)(3) should be read to impose on US West the duty to provide MCI and all other carriers with access to all listings to which US West has access. If US West cannot provide MCI with access to all of the listings accessed and used by US West, then US West should be foreclosed from using such listings.

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<sup>54</sup> See First Report and Order, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98 at paras. 313, 538, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket No. 95-185, FCC 96-235 (rel. Aug. 8, 1996), aff’d in part and rev’d in part on other grounds sub nom. Iowa Utilities Bd. v. FCC, No. 96-3321 and consolidated cases (8th Cir. July 18, 1997); See also Second Report and Order and Memorandum Opinion and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98 at paras. 118, 141, 143, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket No. 95-185, FCC 96-333 (rel. Aug. 8, 1996), aff’d in part and rev’d in part on other grounds sub nom. California Pub. Util. Comm’n v. FCC, No. 96-3519 and consolidated cases (8th Cir. Aug. 22, 1997).

<sup>55</sup> See US West’s October 24, 1997 Response to MCI’s Second Further Interrogatory No. 5, in which US West stated that it cannot provide MCI with access to incumbent LEC or out-of-region listings because US West does not own such listings (MCI v. US West, CCB File No. E-97-40).

<sup>56</sup> 47 U.S.C. § 251(b)(3).

US West's failure to provide MCI with nondiscriminatory access to all of the listings it provides through all forms of directory assistance, including National Directory Assistance, constitutes an anticompetitive and unreasonable practice. US West possesses such a complete directory assistance database only because of its position as a monopoly local service provider throughout its vast service region.<sup>57</sup> Because the BOC provision of National Directory Assistance service presents several discriminatory and anticompetitive problems, the requested forbearance should not be granted.

**E. If the Commission Classifies National Directory Assistance as Incidental InterLATA and Grants the Requested Forbearance from Section 272, Nondiscrimination Requirements Should Apply**

Should the Commission nevertheless decide to classify National Directory Assistance service as an incidental interLATA service and grant forbearance from the application of Section 272's separate affiliate requirements, the Commission should only grant such forbearance subject to the nondiscrimination requirements contained in the BOC Forbearance Order.

As the Commission decided in the BOC Forbearance Order with respect to granting forbearance from Section 272 for BellSouth's provision of its various reverse directory assistance services, US West should be required to make "available to unaffiliated entities *all directory listing information that it uses* to provide" National Directory Assistance "at the *same rates, terms, and conditions*, if any," US West "charges or imposes on its" National Directory

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<sup>57</sup> See BOC Forbearance Order at ¶¶ 81, 82.

Assistance (emphases added).<sup>58</sup> US West is clearly obligated to provide to MCI the entire and complete directory assistance database and listings used by US West's operators, including all independent and competitive LEC listings.<sup>59</sup> This requirement must be met for US West to avoid violating Section 272(c)(1) of the Act, which details the nondiscrimination safeguards associated with Section 272 affiliates.<sup>60</sup>

Further, similar to the Commission's holding in the BOC Forbearance Order, to the extent that US West "charges unaffiliated entities for directory listings" that it uses to provide National Directory Assistance, US West should be required to impute the same charges to itself.<sup>61</sup> In addition, US West should be required to demonstrate its adherence to the Commission's strict separate affiliate compliance requirements regarding cost allocation, the cost allocation manual and independent audits.<sup>62</sup>

**F. Restrictions on BOC Provision of National Directory Assistance Service Do Not Raise First Amendment Concerns**

In its Further Submission, US West argues that any restriction placed on its ability to

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<sup>58</sup> BOC Forbearance Order at ¶ 70.

<sup>59</sup> At page 5 of its Answer to MCI's Complaint (MCI v. US West, CCB File No. E-97-40), US West stated that it "utilizes its usual directory assistance database to provide out-of-LATA, in-region numbers," and it "will provide access to that database pursuant to an interconnection agreement." As noted above in Section E of the instant comments, US West has flatly refused to provide MCI with all of the numbers in the US West database.

<sup>60</sup> See 47 U.S.C. § 272(c)(1); see also BOC Forbearance Order at ¶ 79.

<sup>61</sup> BOC Forbearance Order at ¶ 86.

<sup>62</sup> Id. at ¶ 93.

provide National Directory Assistance service, including any condition that it provide such service pursuant the separate affiliate requirements of Section 272, raises serious First Amendment concerns.<sup>63</sup>

If the Commission determines, as MCI has argued, that National Directory Assistance service is an in-region interLATA service subject to the authorization provisions of Section 271(d)(3), then no legitimate First Amendment concerns exist. Because the provision of National Directory Assistance service should be restricted like all other services prohibited to each BOC under Section 271 unless and until the BOC receives Section 271 authority, the provision of National Directory Assistance service can be restricted without violating the First Amendment. Indeed, the government is permitted to restrict commercial speech where it “asserts a substantial interest in support of [a] regulation, the regulation advances that interest, and the regulation is narrowly drawn.”<sup>64</sup> Here, the challenged restriction advances the “substantial” government interests of promoting fair competition.<sup>65</sup>

Moreover, if the Commission were to determine that National Directory Assistance is an

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<sup>63</sup> US West Further Submission at 30-33.

<sup>64</sup> See In the Matter of Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information, CC Docket No. 96-115, Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended, CC Docket No. 96-149, Second Report and Order and Further Notice of Proposed Rulemaking, FCC 98-27 (rel. Feb. 26, 1998) at ¶¶ 43 and 106 (citing Central Hudson Gas and Elec. v. Public Serv. Comm’n, 447 U.S. 557, 563 (1980)).

<sup>65</sup> See *id.* at ¶ 107 (citing Turner Broad. Sys., Inc., v. FCC, 512 U.S. 622, 663 (1994) [“the Government’s interest in eliminating restraints on fair competition is always substantial, even when the individuals or entities subject to particular regulations are engaged in expressive activity protected by the First Amendment”]).

incidental interLATA service under Section 271(g)(4) of the Act and that such service must be provided in accordance with the separate affiliate safeguards in Section 272 of the Act, then such a requirement would be justified for the above-described reasons. Any determination by the Commission that BOCs adhere to the strict separate affiliate safeguards contained in Section 272 of the Act -- especially in light of the potential significant problems regarding discrimination and competition as explained above in Section III.D. -- can be upheld on the basis that such a restriction promotes the substantial governmental interests of promoting fair competition.

#### **IV. CONCLUSION**

US West admits that its National Directory Assistance service is offered within the US West region and that interLATA transmissions are involved in the provision of the service. Moreover, US West continues to alter its own characterization of National Directory Assistance. US West was correct in its previous argument that National Directory Assistance service should be categorized as adjunct to basic. Such a categorization, however, is a further illustration that the Commission should categorize the service as an interLATA telecommunications service, since it facilitates the placing of interLATA calls. Thus, National Directory Assistance is an in-region interLATA telecommunications service subject to the restrictions in Section 271 of the Act.

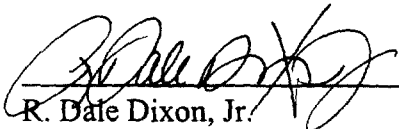
With a new and equally unconvincing argument, US West attempts to have National Directory Assistance service categorized as an incidental interLATA service. As explained above, National Directory Assistance is not an incidental interLATA service. Further, National Directory Assistance is not a previously authorized service under Section 271(f) of the Act.

Thus, US West's National Directory Assistance is an in-region interLATA service for which US West must receive 271(d) authority before it may provide such service.

Because National Directory Assistance is an in-region interLATA service for which Section 271(d) authorization is still necessary, forbearance from the application of Sections 251, 271 and 272 is not available. Accordingly, US West and all other BOCs should be prohibited from providing National Directory Assistance service unless, and until, they receive Section 271 authority. Finally, even if National Directory Assistance were an incidental interLATA service, the Commission should not forbear from the application of the Section 272 separate affiliate requirements to such service.

WHEREFORE, MCI respectfully requests that the Commission promptly deny the requests of US West and dismiss its petition. The relief sought in the petition would directly violate existing law and regulations.

Respectfully submitted,  
MCI TELECOMMUNICATIONS CORPORATION

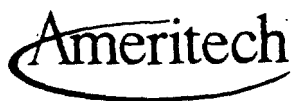
By:   
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Frank W. Krogh  
Lisa B. Smith  
1801 Pennsylvania Avenue, NW  
Washington, D.C. 20006  
202-887-2383

Its Attorneys

Date: April 9, 1998



## **EXHIBIT A**



**Frank Michael Panek**  
Counsel

July 14, 1997

VIA FACSIMILE (202-418-0236) AND OVERNIGHT DELIVERY

Diane Griffin Harmon, Esq.  
Staff Attorney  
Federal Communications Commission  
Room 6312B  
2025 M. Street, N.W.  
Washington, DC 20554

**Re: MCI Telecommunications Corp. V. Illinois Bell, et al.;**  
**File Number E-97-19**

Dear Ms. Griffin Harmon:

As directed in your letter of July 11 and discussed during this afternoon's status conference, attached are call-flow narratives for Ameritech's 1-800-AMERITECH and National Directory Assistance offerings. These materials are written versions of Jon Sonnenschein's earlier verbal descriptions explaining in a step-by-step fashion how customers use these offerings. As requested, they are annotated (in *italics*) with "scripts" of the branding and other messages heard by customers during actual calls. For your convenience, minor additions also document our verbal answers to several questions which arose during today's status conference. Copies of radio, television and print media promotional materials regarding the 1-800-AMERITECH offering are also provided herewith.

This documentation from today's status conference is a purely factual supplement to the record, and does not present any new materials of a character that should require either further factual development or additional legal argument. As I noted earlier today, it is Ameritech's continued hope that the parties can avoid expanding the issues or reopening discovery at such a late date. To that end, the procedural schedule and structure set forth at the outset of this proceeding (in Mr. Reynolds' letter of May 23) admonished the parties that "(a)bsent a showing of extraordinary need, no extensions will be granted and no additional discovery will be allowed." Nonetheless, should counsel for

MCI elect to submit additional factual materials or legal argument regarding the attached documentation of today's status conference. Ameritech respectfully reserves its right to respond fully in kind to any such argument or materials. Both the Commission's rules (see, e.g, 47 CFR § 1.732[g]) and basic notions of due process require no less.

Sincerely,

A handwritten signature in black ink, appearing to read "Frank W. Krogh". The signature is written in a cursive, slightly stylized font.

attachments

cc: R. Dale Dixon, Esq.  
Frank W. Krogh, Esq.  
Lisa B. Smith, Esq.  
Counsel for MCI Telecommunications Corp.  
ITS (paper attachments only)

## **1-800-AMERITECH Call Flow**

To illustrate the flow of an in region interLATA call, I will describe a hypothetical call from Chicago to Detroit.

- Step 1. The customer dials 1-800-AMERITECH.
- Step 2. Ameritech routes the call to the Access Tandem switch in the same LATA as the caller, as it does for any other call to an 800-number.
- Step 3. At the switch, Ameritech searches the national 800-number data base to determine who carries the dialed number. The data base responds that 1-800-AMERITECH is WilTel's number.
- Step 4. Ameritech routes the call to WilTel's closest Point of Presence switch, as it does for any other WilTel 800-number call.
- Step 5. From its switch, WilTel routes the call over its network to its Point of Presence closest to the company providing wholesale operator services.
- Step 6. WilTel routes the call from its switch to the wholesale operator services provider's switch.
- Step 7. The wholesale operator services provider prompts the customer for the number they are calling and their calling card number and PIN.  
**["Welcome to 800-AMERITECH."]  
["To place a calling card call, dial the area code and seven-digit phone number you wish to reach now.  
Or, to place an international call, dial 0 now."]  
["To use your calling card, please enter the calling card number and PIN now.]**
- Step 8. The customer enters this information or requests operator assistance.
- Step 9. The wholesale operator services provider checks the calling card number and PIN in its data base.
- Step 10. If the card is valid, the wholesale operator services provider passes the call back to the WilTel Point of Presence described in Step 5.  
**["Thank you for using 800-AMERITECH."]**
- Step 11. WilTel routes the call over its network to its Point of Presence closest to the called number.
- Step 12. WilTel passes the call to the Ameritech Access Tandem switch closest to the called number.
- Step 13. Ameritech routes the call to the called number, as it does for any other long distance carrier's call.  
**["RING"]**

In summary, the call is handled in the same way as a 1-800-COLLECT call. The only difference is that WilTel carries the call instead of MCI.

## **National Directory Assistance Call Flow**

To illustrate the flow of a National Directory Assistance call, I will describe a hypothetical call in Chicago.

- Step 1. The customer dials 411.
- Step 2. Ameritech routes the call to the Operator Services switch in the same LATA as the customer, as it does for any other Operator Services or Directory Assistance call.
- Step 3. At the switch, Ameritech determines that the customer requested Directory Assistance service and brands the call. All Ameritech Directory Assistance and Operator Services are provided from the same switches in the same LATA as the calling customers.  
[**"Ameritech National Directory Assistance."**]
- Step 4. The Operator Services switch reaches out for a Directory Assistance Operator in the same LATA as the customer.
- Step 5. The Operator asks the customer for the City and State of the desired listing and the listed name.  
[**"Operator. City and State?"**]
- Step 6. The customer requests the listing from the Operator.
- Step 7. The Operator launches a search to the data base in Milwaukee, Wisconsin or Troy, Michigan. For network efficiency purposes, these same data bases are used for both local and national directory assistance.
- Step 8. The Operator finds the desired listing in the data base.
- Step 9. The Operator sends the data to an audio response unit colocated with the operator services switch in the same LATA as the customer.
- Step 10. The Operator drops off the call and connects the audio response unit at the switch to the customer.
- Step 11. The audio response unit at the switch reads the listing to the customer in the same LATA.  
[**"Thank you for calling. The number is area code NPA, NXX-XXXX. Area code NPA, NXX-XXXX. If you need assistance, please say 'yes' now."**]
- Step 12. The customer hangs up.

In summary, except for the location of the listing requested by the customer, national directory assistance is handled the same way as local directory assistance.

Ameritech has made national directory assistance available for resale to Competitive LECs (CLECs). Ameritech will brand each CLEC's calls appropriately (e.g., MCI Metro). Ameritech makes the same data available to CLECs as it does to its own customers.

**CERTIFICATE OF SERVICE**

I, R. Dale Dixon, Jr., hereby certify that a true copy of the foregoing "COMMENTS" was served this 9th day of April, 1998, by hand delivery or by first-class United States Mail, postage prepaid, upon each of the following persons:

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Federal Communications Commission  
Room 544  
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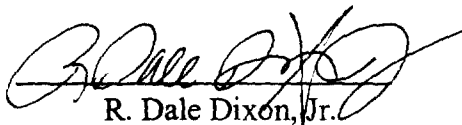
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\* - denotes hand delivery

  
R. Dale Dixon, Jr.